

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6459 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

BHUPATSINH KARSHANJI RATHOD

Versus

DISTRICT MAGISTRATE

Appearance:

THROUGH JAIL for Petitioner
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/11/96

ORAL JUDGMENT :

1. This Special Civil Application has been received from Baroda Central Jail, Baroda where the petitioner is suffering the detention.

2. I have perused the relevant papers available on the record and have gone through the detention order as well as the grounds enclosed with the detention order.

The grounds enclosed with the detention order show that 6 criminal cases were registered against the petitioner at Jamnagar Panchkoshi 'B' Division under the Bombay Prohibition Act. Out of these 6 cases, 4 were pending trial before the court and in 2 cases police investigation was going on at the time when the detention order was passed. Besides the allegations in the criminal cases, as aforesaid, the detaining authority has also taken into consideration the statements dated 16-4-96 made by 4 witnesses against the detenu's anti social and criminal activities. The detaining authority has mentioned that the petitioner is engaged in the unauthorised business of manufacture, possession and sale of unauthorised liquor, has been moving with weapons, threatening the people creating an atmosphere of terror and thus become a cause for insecurity, he has been taking commodities from the traders without paying the charges and in case the demand is made he threatens to kill the traders and, therefore, it has become necessary to detain him. Accordingly the detention order was passed.

3. Having gone through the papers available in the record, I find that the allegations and the materials which have been relied upon by the detaining authority against the petitioner do not constitute a case of breach of public order. It can at the most be said to be a case of breach of law and order for which the detention order could not be passed. The grounds of breach of law and order are not germane to the considerations, which are necessary to make out a case of breach of public order so as to warrant the detention. The reasonings given by this court in the order dated 4-10-96 in Special Civil Application No.3879/96 apply with full force in the facts of this case and hence the detention order can not be sustained in the eye of law.

4. Accordingly the Special Civil Application is allowed and the impugned detention order dated 30-4-96 passed by the District Magistrate, Jamnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

Since this Special Civil Application was received through jail and the petitioner is not represented through any lawyer the Registry may take extra care to see that the writ is issued and served upon all concerned without any delay.

